

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0159
ADJUSTED GROSS INCOME TAX
For Years 1998, 1999, & 2000**

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ISSUE

I. Adjusted Gross Income Tax – Assessment

Authority: IC 6-8.1-5-4

Taxpayer protests the assessment of adjusted gross income tax based on the best information available.

STATEMENT OF FACTS

Taxpayer was assessed adjusted gross income tax as a result of a department audit. The audit discovered significant and unexplained variations in taxpayer's reported sales within Indiana and taxpayer's reported adjusted gross income within Indiana, and increased taxpayer's Indiana adjusted gross income tax liability accordingly. Taxpayer then protested the audit's initial finding and provided documentation demonstrating the discrepancy for the 2000 assessment. The adjustments based on taxpayer's documentation were made, and taxpayer now protests requesting that a pro rata adjustment be made for the 1998 and 1999 assessments.

I. Adjusted Gross Income Tax – Assessment

DISCUSSION

To calculate the audit adjustment, 1998 shipments to Indiana zip codes reported for sales tax purposes represented the best available information on the total population of products sold and shipped to destinations in Indiana. Since taxpayer declined to identify the shipping origins and destinations of its sales, no audit verification of throwback sales was possible. As a matter of practical expediency, unverified throwback sales were accepted as filed.

After the assessment was issued, taxpayer provided documentation for 2000, one of the three years at issue. This documentation was accepted and the 2000 assessment was adjusted accordingly. Taxpayer now argues that the 1998 and 1999 year assessments are

to be reduced on a projection based on the 2000 adjustment. This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include *all source documents necessary to determine the tax*, including invoices, register tapes, receipts, and canceled checks.
(*Emphasis added*)

Taxpayer does not cite any statute, regulation, or case law for the proposition that the department is required to accept assertions as to the nature of the transactions based solely on a single year's activity. Taxpayer's assertion that the department is required to project based on their selected data is not sustainable.

FINDINGS

The taxpayer's protest is denied.

JM/CD/DK 06/21/06